

SEPTEMBER 6, 2006

PRELIMINARY DEVELOPMENT AGREEMENT

This Preliminary Development Agreement (hereinafter, the "Agreement") is dated September____, 2006, between the City of College Park, Maryland (hereinafter, "the City"), a Maryland municipal corporation, and Capstone Development Corp. (hereinafter, "Capstone"), an Alabama corporation (each sometimes referred to hereinafter as a "Party," or collectively as the "Parties").

RECITALS

WHEREAS, the City and Capstone desire to enter into a development program which will result in a mixed use, downtown redevelopment of the existing City Hall site to stimulate revitalization of the City's core area; and

WHEREAS, the City desires to construct a public parking garage to alleviate a critical shortage of parking in the City's downtown business district; and

WHEREAS, the City, recognizing the need for a catalyst and focal point for the redevelopment and revitalization of the downtown College Park area, is agreeable to committing the current City Hall site for the development of a residential and commercial project, and to acquiring space for governmental operations at an alternative location; and

WHEREAS, Capstone is an experienced developer of residential and commercial projects and has the resources and capability to redevelop the current City Hall site and to oversee and coordinate, as the developer, the design, engineering, and construction of a residential condominium project, the desired parking garage and a new City Hall building meeting the City's needs; and

WHEREAS, the City and Capstone have negotiated mutually agreeable and advantageous terms upon which Capstone is willing to undertake the design, engineering and construction of a parking garage and a new City Hall, together with a residential condominium project from which condominium project the parties shall derive certain benefits.

WHEREAS, this Agreement is intended to set forth the terms and conditions under which the Parties will proceed initially with the work outlined herein. The Parties are committed to produce a more comprehensive and detailed Development Agreement which will be negotiated and executed prior to commencement of any construction activity on the Projects, and which will more definitively outline the conditions, roles, responsibilities, risks and rewards to be undertaken by each Party in the development of the contemplated projects.

NOW, THEREFORE, Capstone agrees to provide such services to the City and the City agrees to engage and assist Capstone to develop the foregoing projects in consideration of the covenants, terms, and conditions contained in this Agreement and for other good and valuable consideration, the receipt and sufficiency of all of which are hereby acknowledged.

ARTICLE 1.

TERM

1.1. Term. This Agreement shall be effective as of the Effective Date and shall continue in effect until completion of the projects contemplated herein or terminated in accordance with this Agreement.

1.2. Recitals. The Recitals stated hereinabove are incorporated in this Agreement.

1.3. Effective Date. The effective date of this Agreement (the “Effective Date”) shall be the later to occur of (i) the date that this Agreement is approved in accordance with governing law by the City Council of College Park, Maryland, or (ii) the date this Agreement is duly executed by Capstone.

ARTICLE 2.

THE PROJECTS

2.1 The Agreement governs three separate projects, as follows: (a) a Municipal Parking Garage (“Garage”) consisting of 340 parking spaces (more or less) with first floor commercial space; (b) a mixed use condominium project, not to exceed nine (9) stories, consisting of up to 165 residential units (more or less) with commercial office and/or retail space, and sufficient on-site parking (the “Condominium”) designed in accordance with development standards set forth in the College Park Sector Plan; and (c) a new City Hall located at the City owned property at 4601 Calvert Road, College Park, Maryland (the “New City Hall”), (the Garage, the Condominium and the New City Hall are sometimes collectively referred to hereinafter as the “Project” or the “Projects”).

2.2 The City will designate a Project Manager who will serve as the City’s representative for Project coordination, to monitor development progress and compliance with approved plans, and to satisfy the Mayor and City Council that the projects are proceeding within the budget criteria established by the Parties.

ARTICLE 3.

MUNICIPAL PARKING GARAGE

3.1. Capstone will, within three weeks of the Effective Date, begin and thereafter diligently prosecute to completion, the design, engineering and construction of the Garage, to be constructed on the City’s current parking lot, located on the south side of Knox Road at its intersection with Yale Avenue (“Special Lot”), and the two contiguous lots which have been acquired by the City through the exercise of its land acquisition authority, at City expense (not a

Project expense). Capstone will design and engineer the Garage to have a total estimated cost not to exceed \$7,300,000 unless otherwise agreed to by the City, inclusive of (i) a Capstone development fee of 3.5% of total development costs, and (ii) Capstone overhead costs payment of 1.5% of total development costs. Such \$7,300,000 cap on the cost of the Garage shall not include the cost of property acquisition and Special Lot land value. Design work shall be subject to review and approval by the City. Calculation of Capstone development fee and overhead costs payment shall be calculated on total development costs less the development fee, the overhead costs payment and the cost of property.

3.2. In the event the City determines to proceed with the construction of the Garage, the City shall issue a municipal revenue bond (or provide other financing) in the amount of \$6,500,000, the proceeds of which shall be used to fund, in part, the design, engineering, construction, development fee and overhead costs of the Garage. The remaining Garage costs, not to exceed \$800,000, if the Garage proceeds to construction, shall be advanced by Capstone, as the final portion of the costs to complete the Garage and only after the entirety of the \$6,500,000 provided by the City has been fully funded and expended (the "Capstone Advance"). The Capstone Advance shall be reimbursed to Capstone as the first priority distribution from the proceeds of the construction financing of the Condominium as set forth in Article 4 hereof. The reimbursement of Capstone for the Capstone Advance shall have a first priority claim upon such financing proceeds, and shall be made at the time of the closing of the financing of the Condominium, until such time as Capstone has been reimbursed in full.

3.3. If the Garage proceeds to construction, Capstone will receive a development fee of 3.5% of total development costs and a development overhead payment of 1.5% of total development costs. The development fee and the overhead payment shall be included in and are considered a portion of the overall budgeted costs of the Garage. Capstone may elect to defer receipt of its development fee and/or overhead payments for the Garage as a means of making the Capstone Advance to cover at least a portion of the its obligation to fund up to \$800,000 in the potential additional Garage costs referenced above in Article 3.2.

3.4. If, for any reason, by January 19, 2007, the City does not take official action authorizing Capstone to proceed with the development of the Garage, the City agrees, within 45 days of the submission by Capstone of reasonable documentation, to pay Capstone its reasonable documented out-of-pocket costs in connection with the design and engineering of the Garage, including a proportional amount of its development fee and overhead as described in Article 3.1. Upon such payment to Capstone due to the failure by the City to proceed with the development of the Garage, or upon the final completion (including warranty periods) of the Garage if developed, Capstone will assign to the City its rights in and to the architectural and engineering documents pertaining to the Garage. Capstone shall ensure that the architectural and engineering contracts for the Garage acknowledge the City's rights in and to such documents. If the Garage is developed but the Condominium does not, for any reason, proceed, the City shall pay Capstone the amounts set forth in Paragraph 3.2 hereof that would otherwise have been paid from the proceeds of the closing of the construction financing for the Condominium, in accordance with Paragraph 4.7 hereof, within 45 days of completion of the Garage, from other funds of the City. The City also reserves the right to direct Capstone to proceed with development of the Garage if the budgeted cost of the Garage exceeds \$7,300,000 with the

understanding that such additional costs shall be borne by the City and the City has approved such additional costs as part of its design or overall project approval. In any such event, the amount of Garage costs to be deferred and “covered” by Capstone subject to a priority reimbursement distribution from the proceeds of condominium financing or sales pursuant to this ARTICLE 3, shall not exceed \$800,000. If the Garage is completed and development of the Condominium moves forward, the reimbursement to Capstone for the Capstone Advance under Paragraph 3.2 will be made out of the proceeds of the closing of the construction financing for the Condominium.

3.5. Presuming that Capstone is authorized to proceed with the Garage planning not later than October 24, 2006, and with the assistance and support of the City receives all necessary permits and other authorizations and financing commitments from third parties in a timely manner, , and the City provides its written commitment on or before January 19, 2007 to make available not less than a total of \$6,500,000 (with the initial funding of such amount to occur no later than March 21, 2007), Capstone and its design-build team will make commercially best efforts to complete the Garage, so that it is delivered to the City in a condition ready for use by members of the public, on or before June 1, 2008. Time is of the essence, as the parties acknowledge that the availability of sufficient parking is critical to the redevelopment of downtown College Park and the economic welfare of the residents of College Park. Any delays, other than those due to failure of Capstone to prosecute its work in a commercially reasonable manner, shall extend the June 1, 2008 delivery date accordingly.

3.6. Capstone, with the assistance and support of the City, shall be responsible for obtaining all permits, licenses and government approvals necessary to proceed with the construction of the Garage and shall take all actions necessary, in the exercise of its commercially reasonable efforts, to secure such permits, licenses and government approvals in a timely and expeditious manner.

3.7 Capstone’s obligations relative to the development of the Garage are subject to the following: (a) design and engineering of the Garage, and construction and development cost estimates based thereon, that confirm the Garage can be built within the contemplated budget of \$7,300,000, or an increased budget mutually agreed upon by the Parties; (b) a reasonable schedule for completion of the design, engineering and construction of the Garage, with extensions for (i) conditions not reasonably foreseeable by Capstone or if foreseeable by Capstone then beyond the reasonable control of Capstone, (ii) Force Majeure, or (iii) delays caused by actions or lack thereof by the City; (c) a mutually agreeable plan for contingency funding of not reasonably foreseeable conditions, City actions or failures to act, or Force Majeure, which cause the actual cost of the Garage to exceed the budget; (d) a warranty limited to one year and provided by the general contractor; (e) a complete exemption from liability for Capstone and its design-build team for existing site conditions, other than such existing site conditions that are specifically known to Capstone through the exercise of reasonable due diligence, or which should have been known to Capstone through the exercise of reasonable due diligence; (f) securing of necessary entitlements and permits within the timeframe allowed by the development schedule for the Garage; and (g) City funding of at least \$6,500,000, to be disbursed on a monthly basis as required during the design and construction phases of delivery, to fund Garage costs.

ARTICLE 4.

THE CONDOMINIUM

4.1. Capstone will proceed immediately from the Effective Date with further due diligence and evaluation of the economic potential and viability of constructing and marketing the Condominium to be developed on the property known as 4500 Knox Road, College Park, Maryland, upon which property City Hall is currently located. Capstone shall, at its own cost, commission a market study designed to assess and measure the viability or lack thereof of the Condominium.

4.2. The goal of the parties hereto shall be to have the market study completed within eight (8) weeks from the Effective Date, or as soon thereafter as is practical. Immediately upon receipt of the market study, which shall occur no later than December 4, 2006, unless such deadline is mutually extended by the parties, the results shall be reviewed by the City and Capstone to evaluate the projected viability of the Condominium. The Condominium shall be deemed to be viable if the marketing study indicates that the Project will meet the projections set forth in the Financial Spreadsheet attached hereto as Exhibit A, or if the Parties mutually agree that the Condominium is viable, irrespective of the results of the market study vis-à-vis the Financial Spreadsheet; provided, however, that neither Party shall be obligated to proceed under such conditions, the decision to do so being in the sole and absolute discretion of each of the Parties hereto. If Capstone is willing to proceed with the Condominium Project but the City elects not to proceed, the City shall reimburse Capstone its out of pocket costs, for the market study, preliminary design and pre-construction expenses. If the City elects to proceed and thereafter at any point elects not to proceed, the City will, in addition to such expenses, also reimburse Capstone for all legal fees for work associated with the securing of entitlements, financing or the establishment of the condominium regime.

4.3. Should the marketing study reveal that the Condominium is viable, Capstone shall immediately thereafter begin preparing preliminary design and cost estimates for the Condominium and the creation of a condominium regime for the property, and shall complete this work on or before May 4, 2007; provided however, if such work is not complete by May 4, 2007 due to circumstances beyond the reasonable control of Capstone, the City and Capstone shall mutually agree to a reasonable extension of such period. The Condominium documents, among other things, shall appropriately address the preference of the Parties that, to the degree allowed by law, unless approved by the Parties in writing, all units shall be owner-occupied, or occupied only by Owner's family members or domestic partner. After completion of the required level of design work, Condominium marketing and pre-sales shall begin as soon as allowed under Maryland Condominium Law. Design of the Condominium Project shall be subject to the review and input of the City, and to City approval of the height of the building, number of units and dedicated parking spaces, and other general design parameters, said approval not to be unreasonably withheld.

4.4. Capstone shall proceed with good faith and due diligence to complete the design and construction pricing and the creation of the condominium regime for the Condominium so as

to allow pre-sales of Condominium units to begin on or before June 4, 2007. Capstone shall use its commercially reasonable efforts to obtain financing commitments sufficient to fund the Condominium Project.

- a. If the Condominium pre-sales reach 50% within eight (8) months of the date upon which Capstone first offers such units for sale, and financing commitments sufficient to fund the entire Condominium Project are in place, the City and Capstone will proceed with the development of the Condominium, with Capstone earning a development fee of 4.5%, and an overhead payment 2% of total development costs. Calculation of Capstone's development fee and overhead costs payment shall be calculated on total development costs less the development fee, the overhead costs payment and the value of the site as agreed upon by the parties.
- b. If the Condominium pre-sales do not reach 50% within eight (8) months of the date upon which Capstone first offers such units for sale, the Condominium contemplated by this Article and the New City Hall contemplated by Article 5 hereof shall be cancelled, and the parties shall have no further obligations with respect to Articles 4 and 5 hereof, unless the Parties agree mutually to continue the Condominium in spite of the results of the Condominium pre-sales; provided, however, that neither party shall be obligated to proceed under such conditions, the decision to do so being in the sole and absolute discretion of each of the Parties hereto.

4.5. Capstone, with the cooperation and support of the City, shall be responsible for obtaining the financing necessary to fund all costs associated with the construction process for the Condominium Project.

4.6. Capstone, with the assistance and support of the City, shall be responsible for obtaining all permits, licenses and government approvals necessary to proceed with the construction of the Condominium Project and shall take all actions necessary to secure such permits, licenses and government approvals in a timely and expeditious manner.

4.7. Proceeds from the sale of condominium units, after the payment of all Condominium costs except the Capstone development fee and overhead for the Condominium, as referenced above in Article 4.4, which Capstone will contribute as its equity contribution, shall be allocated in accordance with the plan outlined in the Financial Spreadsheet contained in Exhibit A, summarized as follows:

- a. To Capstone in payment of any unreimbursed costs incurred but deferred in the Garage Project, not to exceed \$800,000.
- b. To Capstone and the City, pro rata, in the proportion that the appraised value of the City Hall site contributed by the City to the Condominium Project (as reflected on Exhibit A attached hereto) bears to the Development Fee on the Condominium Project deferred by Capstone, until an aggregate amount equal to the sum of that land value and the deferred Development Fee has been distributed to the City and Capstone.

- c. The balance pro rata until fully distributed, 60% to Capstone and 40% to the City.

4.8 Capstone's obligations relative to the development of the Condominium are subject to the following: (a) design and engineering of the Condominium, and construction and development cost estimates based thereon, that confirm the Condominium can be developed within a budget mutually agreed upon by the Parties, which based upon economic assumptions and forecasts will generate returns on investment agreeable to the Parties, (b) a reasonable schedule for completion of the design, engineering and construction of the Condominium, with extensions for (i) conditions not reasonably foreseeable by Capstone or if foreseeable by Capstone then beyond the reasonable control of Capstone, Force Majeure, or delays caused by actions or lack thereof by the City (c) a mutually agreeable plan for contingency funding of not reasonably foreseeable conditions, City actions or failures to act, or Force Majeure, cause the actual cost of the Condominium to exceed the budget, (d) a warranty commitment from the general contractor acceptable to the Parties, (e) a complete exemption from liability for Capstone and its design-build team for existing site conditions other than such existing site conditions that are specifically known to Capstone through the exercise of reasonable due diligence, or which should have been known to Capstone through the exercise of reasonable due diligence, (f) securing of necessary entitlements and permits within the timeframe contemplated by the Condominium development schedule, (g) financing commitments sufficient to cover the full cost of the development of the Condominium, and (h) City vacation of the existing City Hall no later than one month prior to the scheduled commencement of construction of the Condominium, in accordance with Article 5 below.

ARTICLE 5.

NEW CITY HALL PROJECT

5.1. If the Condominium pre-sales reach 50% within eight (8) months of the date upon which Capstone first offers such units for sale, the necessary financing secured and closed, or if the City and Capstone otherwise mutually agree to move forward with the Condominium with the construction financing closed, the City and Capstone will proceed with the design and development of the New City Hall, to be constructed upon the property located at 4601 Calvert Road, College Park, Maryland and known as the former College Park Elementary School, subject to the following terms:

- a. One month prior to commencement of construction of the Condominium project, the City will move into a temporary City Hall location for a one to two year period, while the new City Hall is designed and constructed.
- b. The City, if required to secure the financing for the New City Hall, will lease the New City Hall at a rate and for a term necessary to facilitate construction financing of this component, with the understanding that the City may buy out or liquidate the debt and cancel this lease using its share of Condominium proceeds or any other sources of funding as the City may deem appropriate. Capstone, with the cooperation of the City, will arrange for and guarantee, subject to commercially

reasonable terms and conditions, commensurate with and reflective of the risks and rewards being undertaken by Capstone, the financing of the construction of the new City Hall using collateral provided by the City, including a leasehold interest in the land, if appropriate. Capstone will earn but defer receipt of a development fee of 4.5% of the total development cost of the New City Hall, to facilitate financing of the new City Hall; provided, however the entirety of the development fee shall be paid not later than ninety (90) days after issuance of certificate of occupancy for the New City Hall. In any event, and not subject to deferral, Capstone shall earn and be paid during the development of the New City Hall a development overhead payment of 2% of the total development cost as a budgeted expense of the New City Hall. Calculation of Capstone development fee and overhead costs payment shall be calculated on total development costs less the development fee, the overhead costs payment and the value of the land (the value of the land is not a development cost).

- c. The design of the new City Hall shall incorporate the historic facade of the School and maintain the existing field and green space to the extent practically, physically, and economically feasible. The City shall have the final and sole approval of the design and plans for the new City Hall, within and subject to mutually agreed-upon budget parameters. The “base” design-to budget for this component will be established in the Development Agreement, with potential “add-alternates” the City may purchase using its share of the Condominium proceeds or other sources of funding as the City deems appropriate.

ARTICLE 6.

POTENTIAL TAX INCREMENT FINANCING

6.1 The parties agree that they will investigate the utility and feasibility of a Tax Increment Finance (“TIF”) district and financing plan for certain costs of the various development components contemplated hereunder and, if appropriate, and subject to the sole and absolute discretion of the City, may pursue the creation of such a district. The parties acknowledge and agree that the participation of third parties, beyond the direction and control of the City and/or Capstone, would be necessary to the creation and implementation of a TIF district, and that there is no guarantee that the creation of a TIF district can be accomplished or used to fund the projects contemplated by this Agreement.

ARTICLE 7.

REPRESENTATIONS AND WARRANTIES

7.1. Valid Existence. (a) Capstone represents and warrants to the City that (i) Capstone is an Alabama corporation, duly formed, validly existing, duly licensed, and authorized or qualified to do business in, and in good standing under the laws of Maryland for the

transactions contemplated by this Agreement; and (ii) that all requisite corporate actions necessary to enable Capstone to enter into this Agreement and to be legally bound hereby have been taken in accordance with applicable law and Capstone's Charter and By-laws.

(b) City represents and warrants to Capstone that (i) City is a body corporate and politic and a municipal corporation within, and validly existing under the laws of, the State of Maryland, and (ii) that all requisite corporate actions necessary to authorize and enable City to enter into this Agreement and to be legally bound hereby have been taken in accordance with applicable law and the City's Charter.

ARTICLE 8.

CLAIMS

8.1 Any suit to enforce the terms hereof or claim for damages or other remedy for breach or alleged breach or anticipatory breach hereof or arising out of or in connection with this Agreement shall be brought exclusively in the courts of the State of Maryland in and for Prince George's County and the parties expressly consent to the jurisdiction thereof and waive and right they might otherwise have to bring such action in or transfer or remove such action to the courts of any other jurisdiction.

ARTICLE 9.

TERMINATION

9.1. Conditions of Termination. Except as otherwise specifically provided for elsewhere in this Agreement, this Agreement may be terminated under the following circumstances and conditions:

(a) Convenience.

(1) Garage Project. At any time as to Article 3 (after the date the Garage proceeds to construction) hereof the City may deliver to Capstone written notice of its intent to terminate this Agreement for convenience. If the City chooses to terminate this Agreement pursuant to this section 9.1(a)(1), the City shall be obligated to reimburse Capstone for reasonable, customary, and necessary costs as contemplated in the development budget, actually incurred through the date of notice of such termination, together with any reasonable, documented costs arising from termination which would be of a kind and character incurred upon the completion or termination of a project similar to that contemplated in Article 3. The City also will pay Capstone that portion of its development fee commensurate with the development services rendered through termination as currently foreseen and allocated proportionally in Exhibit B, an allocation that is subject to modification by the Project's progress and may be further refined in a later development agreement. The City will pay Capstone's overhead cost payment calculated pursuant to Article 3 to the extent of costs incurred through the date of notice of termination or in connection therewith. The City shall also repay any of the Capstone Advance related to the Garage, that has not been repaid. Such payments shall be made

to Capstone within sixty (60) days of receipt by the City of documentation sufficient to determine the costs and calculate the fees and payments due Capstone. Capstone will use commercially reasonable efforts to include clauses in all contracts with contractors, sub-contractors, and service and material providers for the Garage Project that acknowledge for the right of the City to terminate the agreement for convenience. To the extent Capstone is unable to negotiate the inclusion of such clauses in such contracts, such contracts shall not be entered into by Capstone unless the City has agreed in writing in advance to such contracts.

(2) New City Hall Project. At any time as to Article 5 hereof the City may deliver to Capstone written notice of its intent to terminate this Agreement for convenience. If the City chooses to terminate this Agreement pursuant to this section 9.1(a)(2), the City shall be obligated to reimburse Capstone for reasonable, customary, and necessary costs as contemplated in the development budget, actually incurred through the date of notice of such termination, together with any reasonable, documented costs arising from termination which would be of a kind and character incurred upon the completion or termination of a project similar to that contemplated in Article 5. The City also will pay Capstone that portion of its development fee commensurate with the development services rendered through termination as currently foreseen and allocated proportionally in Exhibit B, an allocation that is subject to modification by the Project's progress and may be further refined in a later development agreement. The City will pay Capstone's overhead cost payment calculated pursuant to Article 5 to the extent of costs incurred through the date of notice of termination or in connection therewith. Such payments shall be made to Capstone within sixty (60) days of receipt by the City of documentation sufficient to determine the costs and calculate the fees and payments due Capstone. Capstone will use commercially reasonable efforts to include clauses in all contracts with contractors, sub-contractors, and service and material providers for the New City Hall Project that acknowledge the right of the City to terminate the agreement for convenience. To the extent Capstone is unable to negotiate the inclusion of such clauses in such contracts, such contracts shall not be entered into by Capstone unless the City has agreed in writing in advance to such contracts.

(3) Condominium Project. Notwithstanding anything in this Agreement to the contrary, in no event can this Agreement be terminated for convenience as to Article 4 after the occurrence of the events described Article 4.4 (a) or (b) hereof which obligate the City and Capstone to develop the Condominiums.

(b) Termination by the City for Uncured Capstone Default. If Capstone defaults in the performance of any of its material obligations or warranties under this Agreement and does not cure such default within thirty days of receipt of a notice of default (hereinafter, "the Default Cure Period" and such notice, "the Default Notice"), the City may, by giving notice to Capstone, terminate this Agreement in whole or in part, as of the termination date specified in the Default Notice. If the default at issue is not curable (for reasons beyond the control of Capstone) within thirty days and if Capstone takes reasonable actions to cure the default then Capstone shall have a reasonable period not to exceed an additional sixty days in which to cure the default, provided that Capstone has notified the City in writing within ten days of receipt of notice of default that the default is not curable including a statement of the reasons beyond the control of Capstone that such default is not curable within thirty days.

(1) Garage Project. If the City terminates this Agreement as to Article 3 for cause after the initiation of work on the Garage, Capstone shall be compensated for the reasonable value of its services provided with respect to the Garage prior to termination, less any damages accruing to the City as a consequence of Capstone's default; but in no event an amount greater than the amount to which Capstone would be entitled pursuant to section 9.1(a)(1) hereof had the termination been one for the convenience of the City. Such compensation shall not be payable to Capstone until such time as the Garage has been completed and the City has determined the nature and extent of any damages accruing to it.

(2) Condominium Project. If the City terminates this Agreement as to Article 4 for cause prior to completion of the Condominium Project, Capstone shall not be entitled to any compensation for the value of its services with respect to the Condominium Project, except as follows: the City shall remain obligated to pay Capstone, upon completion or termination of the Condominium Project, any unpaid amount of the Capstone Advance, to the extent that Capstone has not been paid the Capstone Advance from proceeds of construction financing obtained for the Condominium Project. Further, (i) if Capstone has performed more than seventy-five percent (75%) of its development services under either Article 4 or 5, and (ii) there is a default by Capstone that cannot be cured within the default cure period, and (iii) such developmental services remain utile and beneficial to the project, and (iv) the Project is ultimately completed, then the City shall pay Capstone one-half of the total compensation Capstone would have earned but for such termination for cause; provided, however, other than with respect to the Capstone Advance, that Capstone shall not be entitled to any portion of such payment which would reduce the proceeds distributable to the City pursuant to this Agreement below the amount which would have been distributable to the City had Capstone not defaulted hereunder. If the project is not completed, Capstone shall not be entitled to any payment upon its having been terminated for cause. Nothing in this Agreement shall be interpreted to reduce or eliminate any liability on the part of Capstone for costs or damages arising from a Capstone default and/or any ensuing termination for default by the City pursuant to any agreement, contract, performance or completion bond, or other obligation.

(3) New City Hall Project. If the City terminates this Agreement as to Article 5 for cause prior to completion of the New City Hall Project, Capstone shall not be entitled to any compensation for the value of its services with respect to the New City Hall Project, except as follows: (i) if Capstone has performed more than seventy-five percent (75%) of its development services under Article 5, and (ii) there is a default by Capstone that cannot be cured within the default cure period, and (iii) such developmental services remain utile and beneficial to the project, and (iv) the Project is ultimately completed, then the City shall pay Capstone one-half of the total compensation Capstone would have earned but for such termination for cause. If the project is not completed, Capstone shall not be entitled to any payment upon its having been terminated for cause. Nothing in this Agreement shall be interpreted to reduce or eliminate any liability on the part of Capstone for costs or damages arising from a Capstone default and/or any ensuing termination for default by the City pursuant to any agreement, contract, performance or completion bond, or other obligation.

(c) Termination by Capstone for Uncured City Default.

(1) If the City defaults in the performance of any of its material obligations or warranties under this Agreement and does not cure such default within thirty days of receipt of a notice of default (hereinafter, “the Default Cure Period” and such notice, “the Default Notice”), Capstone may, by giving notice to the City, terminate this Agreement in whole or in part, as of the termination date specified in the Default Notice, as to the project with respect to which such default has arisen. If the default at issue is not curable (for reasons beyond the control of the City) within the Default Cure Period and if the City takes reasonable actions to cure the default then the City shall have a reasonable period not to exceed an additional sixty days in which to cure the default, provided that the City has notified Capstone in writing within ten days of receipt of notice of default that the default is not curable including a statement of the reasons beyond the control of the City that such default is not curable within thirty days.

(2) If Capstone terminates this Agreement for cause after the initiation of work on the Garage, Capstone shall be compensated in accordance with the provisions of Section 9.1(a)(1). If Capstone terminates this Agreement for cause with respect to Article 5, Capstone shall be compensated in accordance with the provisions of Article 9.1(a)(2). If Capstone terminates this Agreement for cause as to Article 4, Capstone shall be compensated in accordance with the provisions of Article 9.1(a)(3).

ARTICLE 10.

INDEMNIFICATION

10.1. (a) Capstone Indemnification of the City. Capstone will indemnify, defend, and hold the City and its elected officials, officials, employees, contractors and agents (collectively, the “City Indemnitees”), harmless from and against any and all claims by any third party and threatened or asserted claims by any third party arising out of or relating to any activities undertaken by Capstone in furtherance of its obligations hereunder, unless such claims arise exclusively from the negligence or intentional acts of the City or a City Indemnatee. Capstone shall require all contractors and subcontractors to provide like indemnifications of the City in all contracts relating to all Projects. Capstone shall have in effect for itself and the City as an additional insured, appropriate levels and types of insurance for projects of the type and nature contemplated herein, and shall require all contractors and subcontractors to carry sufficient and appropriate levels and types of insurance for projects of the type and nature contemplated herein, naming the City as an additional insured as to such insurance policies. Capstone shall require any general contractor performing work on any Project to provide payment and performance bonds in a form and from sureties approved by Capstone and the City, with Capstone and the City each named a dual obligee under said bonds. With respect to specific Projects, the City and Capstone may agree to language superseding this Article 10.1 in any subsequent agreements or contracts regarding such Projects.

10.2. City Indemnification of Capstone. The City, to the extent permitted by law and subject to the limitations of liability conferred upon municipal governments by State law, will indemnify, defend, and hold Capstone, its officers, employees, contractors and agents (collectively, the “Capstone Indemnitees”), harmless from and against any and all claims by any third party and threatened or asserted claims by any third party arising out of or relating to any activities undertaken by the City in furtherance of its obligations hereunder, unless such claims

arise exclusively from the negligence or intentional acts of Capstone or a Capstone Indemnitee. The City shall be required to provide appropriate levels and types of insurance coverage, or self-insure, as is required by law or is otherwise customary with respects to Maryland municipalities engaged in the types of endeavors, contemplated by the Agreement.

10.3. Indemnification Procedure.

(a) In General. A party required to indemnify the other party under this Agreement shall have no obligations for any claim under this Article unless:

(i) the indemnified party notifies the indemnifying party of such claim as soon as practicable, but in no event more than thirty days after the indemnified party receives notice thereof (unless a later notice, does not adversely affect the indemnifying party's ability to defend such claim);

(ii) the indemnified party tenders control of the defense of such claim to the indemnifying party, unless the tender of such defense would create a conflict of interest or would be prohibited by law; and

(iii) the indemnified party provides the indemnifying party with all reasonable cooperation in such defense of such claim at the expense of the indemnifying party.

(b) Consent. The indemnifying party shall have no obligation for any claim under this Agreement if the indemnified party makes any settlement or other communication regarding such claim without the prior written consent of the indemnifying party, unless the indemnifying party is subject to a conflict of interest concerning such consent.

(c) Participation. The indemnified party shall have the right (but not the obligation) to participate in such defense or settlement, in which event each party shall pay its respective attorneys' fees.

ARTICLE 11.

MISCELLANEOUS

11.1. Independent Contractors. The parties acknowledge and agree that Capstone shall be an independent contractor of the City. Neither party shall have any authority to bind the other party unless expressly agreed in writing. Nothing in this Agreement shall be construed to create a partnership, agency or employer-employee relationship between the City and Capstone, and in no event shall the City and Capstone be deemed joint employers.

11.2. Entire Agreement. Except as otherwise provided herein, this Agreement, including the Exhibit A attached hereto, represents the entire understanding and agreement between the parties, and supersedes any prior agreement, understanding or communication between the parties, with respect to the subject matter hereof. This Agreement may only be

amended by a writing executed by both parties. This Agreement may be executed in counterparts, each of which shall be deemed an original, and all of which taken together shall constitute a single instrument.

11.3. Construction. The parties have participated jointly in the negotiation and drafting of this Agreement.

11.4. Assignment. This Agreement shall be binding on the parties and their respective successors and permitted assigns. Neither party may, nor shall either party have the power to, assign this Agreement or any of its rights and obligations under this Agreement without the prior written consent of the other party, except that either party may assign its rights and obligations under this Agreement, in whole or in part, without the approval of, but with notice to, the other party (i) to an affiliate of such party or (ii) to any successor in a merger or acquisition of such party, or an entity that acquires all or substantially all of the assets of such party. In no event will any assignment relieve the assigning party of its obligations under this Agreement. Any attempted assignment or delegation in contravention of this Section shall be void and ineffective.

11.5 Remedy. Nothing in this Agreement shall prevent any disputing or allegedly aggrieved party from pursuing a temporary restraining order, injunctive relief or other equitable relief from a court of competent jurisdiction against the other party at any time if the disputing or allegedly aggrieved party believes in good faith that a breach or threatened breach of any of the provisions of this Agreement would cause it irreparable harm.

11.6 Survival. The provisions of this Agreement, pertaining to termination and payments due at termination and/or indemnification shall survive the expiration or termination of this Agreement.

11.7 Required Approvals. Each party shall obtain all necessary licenses, permits and approvals of this Agreement required by any governmental agency, at its sole cost and expense.

11.8 Waiver. The failure of either party to insist upon the strict and punctual performance of any provision hereof shall not constitute a waiver of, or estoppel against asserting the right to require such performance, nor should a waiver or estoppel in one case constitute a waiver or estoppel with respect to a later breach whether of a similar nature or otherwise.

11.9 Unenforceable Terms. In the event any term or provision of this Agreement shall for any reason be declared or held invalid, illegal or unenforceable in any respect by a court of competent jurisdiction, each party shall agree that (i) such invalidity, illegality, or unenforceability shall not affect any other term or provision of this Agreement and (ii) such term or provision shall be (1) reformed to the extent necessary to render such term or provision valid and enforceable and to reflect the intent of the parties to the maximum extent possible under applicable law or (2) interpreted and construed as if such term or provision, to the extent unenforceable, had never been contained herein.

11.10 Notices. All notices, requests, demands and other communications given or made

in accordance with the provisions of this Agreement shall be deemed to have been given (i) three days after mailing when mailed (by registered or certified mail, postage prepaid, only), (ii) on the date sent when made by facsimile transmission with confirmation of receipt (with hard copy to follow by registered or certified mail, postage prepaid, only) and (iii) on the date received when delivered in person or by courier, to the address set forth below or such other place or places as such party may from time to time designate in writing. Either party may alter its address set forth below by notice in writing to the other party in accordance with this Section 11.10.

If to the City:

Joseph Nagro, City Manager
City of College Park
4500 Knox Road
College Park, MD 20715

Telephone: 301-864-8667
Facsimile: 301-699-8029

with a copy (which shall not constitute notice) to:

Robert Levan, City Attorney
Levan, Ferguson & Levan, P.A.
6325 Woodside Court, Suite 230
Columbia, MD 21046

Telephone: 301-310-9500
Facsimile: 301-310-0778

And if to Capstone:

Jeff Jones, Executive Vice President
Capstone Development Corp.
431 Office Park Drive
Birmingham, AL 35223

Telephone: 205-414-6400
Facsimile: 205-414-6405

with a copy (which shall not constitute notice) to:

David Ryan, Capstone Counsel
Hand Arendall, LLC
P.O. Box 1231
Foley, AL 36536
Telephone: 251-943-6005
Facsimile: 251-970-3375

11.11 No Third Party Beneficiary Status. Except as expressly stated herein with respect to each party's affiliates and contractors, the terms and provisions of this Agreement are intended solely for the benefit of each party hereto and their respective successors or permitted assigns, and it is not the intention of the parties to confer third-party beneficiary rights upon any other party, including employees.

11.12 This Agreement shall be construed in accordance with the laws of the State of Maryland, without regard to its conflicts of laws principles, and irrespective of the jurisdiction in which said Agreement is executed, approved, or validated.

11.13 The parties shall execute such further documents as may be reasonably necessary or appropriate to accomplish the objectives of this Agreement, as the circumstance with respect to each project shall require.

11.14 Non-Compete. Until such time as a decision to proceed with the Condominium Project as described herein is made, and if the parties determine to move forward with the Condominium Project then until such time as the Condominium Project is completed and all units are sold and occupancy permits therefore have been issued, Capstone shall not own, construct, participate in, manage, or otherwise be involved with any project substantially similar to the Condominium Project, in any area included in subareas 1b and 1c in the current US 1 Corridor Sector Plan.

11.15 To the extent not otherwise provided elsewhere in the Agreement, Parties shall use their reasonable efforts to pursue the Project as contemplated in this Agreement, and in doing so, to obtain any and all timely approvals and/or consents as may be necessary or appropriate in furtherance of the Project.

IN WITNESS WHEREOF, each of the parties hereto, by its duly authorized representative, has hereby executed this Agreement.

WITNESS:

CITY OF COLLEGE PARK

Janeen Miller, City Clerk

By: _____
Joseph L. Nagro, City Manager

WITNESS:

CAPSTONE DEVELOPMENT CORP.

By: _____
Name:
Title:

Approved as to form and legal sufficiency

Robert H. Levan
Attorney for the City of College Park

EXHIBIT A

City of College Park, Maryland - Capstone
Financial Spreadsheet/Analysis of Preliminary Development Proposal
July 11, 2006

Estimated Costs of Condominium Project:

Sales: Condos, condo parking, condo retail	\$67,500,000
Costs: All costs (exclusive of development fee)	46,210,000
Capstone 2% overhead	924,200
Repayment of Capstone Advance – capped	<u>800,000</u>
Sub total	<u>\$47,934,200</u>
 Condo project gross profit	 \$19,565,800

Items for allocation:

1. Pro rata to fee and land value:

Development fee (on costs) @ 4.5%	2,079,450
Appraised value of City Hall site (est.)	<u>5,300,000</u>
	<u>\$7,379,450</u>

Balance for allocation \$12,186,350

2. Remainder: 60% Capstone; 40% City

Capstone	\$ 7,311,810
City	<u>4,874,540</u>
	<u>\$12,186,350</u>

EXHIBIT B

Development Services Fee Allocation and Distribution

30% - Planning and Entitlement

45% - Programming and Design

25% - Construction and Construction Administration

ID	Task Name	Start	Finish	Predecessors
1	Notice to Proceed	Mon 10/16/06	Mon 10/16/06	
2	Garage Design and Permitting	Tue 10/17/06	Tue 7/3/07	1
3	Garage Construction	Wed 7/4/07	Fri 7/4/08	2
4	Condominiums Market Study, Review and Feasibility Determination	Tue 10/17/06	Tue 12/20/7	2
5	Condominium Preliminary Design, Permitting, Cost Estimating, Establishment of Condo Regime and Preliminary Marketing Plan	Wed 1/2/07	Tue 7/3/07	4
6	Condominium Presale and Securing of Financing Commitments	Wed 7/4/07	Wed 3/5/08	5
7	Codominium Design Completion and Financing Closed	Thu 3/6/08	Thu 9/4/08	6
8	Condominium Construction	Fri 9/5/08	Fri 3/5/10	7
9	City Hall Design and Permitting	Fri 9/5/08	Wed 5/6/09	8
10	City Hall Construction	Thu 5/7/09	Mon 8/9/10	9